Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

Government Coercion in Labor Disputes

By John A. Fitch
The New York School of Social Work

INDUSTRIAL peace will become a present fact when those who are engaged in industry desire it and have the vision to take the steps necessary to its realization. It is primarily the workshop and not the legislature which has the opportunity and the capacity to make an end of the strife between capital and labor. In attempting, therefore, to suggest measures that the government may take to help avoid industrial disputes, as I shall do later on, I do not wish to be understood as thinking that it is the government which has the greatest part to play in bringing about industrial peace. I recognize, however, that the contribution of government to this question is very important and I am deeply concerned that when it is made it shall promote and not defeat the end that we all desire.

Demands for the compulsory arbitration of industrial disputes in the United States have been numerous, but they have not always come from the same people. Back in the eighties the Knights of Labor in New York tried to get the legislature to enact a law providing for compulsory arbitration. They wanted such a law because they could not get the employers to meet them for the discussion of grievances, and they wanted the state to compel them to listen, and to submit to a judgment other than their own. In the same way, and for the same reason, the workers of Australasia asked for compulsory arbitration in the nineties. In recent years, however, labor has been absolutely opposed to government coercion in labor disputes, both in the United States and abroad. The cry for coercion has come from other groups and it has been chiefly concerned with railroad employment. In the last years before the war this sentiment was growing stronger. The board of arbitration, which handled the case of the locomotive engineers in the eastern territory in 1912, brought in a recommendation that a government board should fix wages on the railroads. They took the position that if the government were going to control income, it ought also to take responsibility for one of the chief elements in cost. Nothing came of this, but in 1916, when a general railroad strike was averted only by the passage of the Adamson Law, the demand for compulsory arbitration became widespread. In January, 1917, therefore, a bill was introduced in Congress for compulsory investigation along the lines of the Canadian Industrial Disputes Act. This bill did not, however, become a law.

Basis of New Demand for Government Coercion

Of course, the war changed the aspect of industrial relations and of industrial controversies, just as it changed other matters. There was general acceptance of the idea that other methods than strikes must be found for the settlement of disputes. Consequently adjustment boards were created which during the war came very near to exercising the power of compulsory arbitration. These boards went out of existence with the end of the war. With their ceasing to func-

tion, there arose a demand for coercion that far exceeds any previous movement of the sort.

The reasons for this movement are not altogether simple, but it has a distinct relationship to certain outstanding controversies to which the attention of the public has been directed. The steel strike of 1919–1920 was reported to be a revolution. The report was without foundation and without justification, but merely because the newspapers said it, a great many people believed it and thought that drastic measures were needed. The coal strike touched people at a vital point. There was fear that the fuel supply was to be cut off at the very beginning of winter. The talk of a railroad strike, which has been uppermost in thought and public discussion for at least a year, and finally the actual occurrence of the so-called "outlaw" strike on the railroads this spring emphasized again in many people's minds the desirability of government machinery to make such things impossible.

Another factor is the rapid growth of the unions during the war period. During the last three or four years the unions have practically doubled their membership. In the absence of knowledge of what the unions will do with their new strength there has arisen a certain fear and a feeling that unions should be curbed. Then we have had evidences of unusual restlessness, strikes both authorized and unauthorized have been many, members of labor unions have been getting out from under the control of their leaders. All of these things have had something to do with the demand for compulsory arbitration. They have furnished the occasion also for all sorts of wild denunciations and recriminations. We have had the claim made that strikes are a manifestation of "bolshevism;" that they were either inspired by bolshevik influences or that the purpose of strikes is to set up a Soviet government. Consequently, there is a demand in some quarters that strikes be made unlawful whether there is machinery for adjudication or not.

LEGISLATIVE PROPOSALS FOR GOVERNMENT COERCION

The first concrete legislative proposal for the exercise of the coercive power of government in industrial disputes, since the war, was that contained in the original Cummins bill, for the regulation of the railroads. It made strikes illegal. It offered fine and imprisonment for those who fomented strikes and created machinery for compulsory arbitration. When that bill was revised in conference the compulsory features were removed to a certain extent. Agencies were created for the settlement of disputes, and it was made mandatory upon the employers and employees to submit their cases to those agencies. Although the penalty for violation of the law is publicity alone, its mandatory character remains and the law is being viewed with a good deal of suspicion by organized labor.

In the various states we have had during the last year a number of very interesting proposals, having as their object either the prohibition of strikes without alternate methods of adjusting the dispute, or compulsory arbitration; for example, there was introduced in the Massachusetts Legislature during the last session a proposed amendment to the Constitution which read, "All controversies between employer and employees are deemed dangerous to public welfare, and the General Court shall have the right to pass laws restricting the right of individuals to strike."

A Constitutional Convention was held in Illinois. Many proposals

came before it dealing with the right to strike. One of them reads as follows: "The right of all the people to the continuous and uninterrupted supply of food, fuel and transportation is a primary right. Such right shall not at any time be obstructed or interfered with by the concerted action of any two or more persons."

This, it will be observed, is a denial of the right to strike without making provision for any other method of adjusting disputes. Besides this there were no less than five proposals for compulsory arbitration, setting up courts for the adjudication of labor disputes, and there was one counter-proposal denying to courts—either existing or to be established—any right whatever to limit the right of labor to strike.

As to bills in legislatures during the sessions of 1920, there was one in Massachusetts providing for compulsory arbitration on street railroads, one in New Jersey applying to certain industries which were said to be "affected with a public interest," four such bills in the New York state legislature, and I dare say they were introduced in other states as well, though they have not come to my attention.

So far, only two laws have actually been placed on the statute books of states providing for the entrance of the coercive power of the government into the field of industrial relations. One, in Colorado, was passed in 1915. It is a compulsory investigation law and forbids a strike or a lockout until the investigation has been completed. The other is the law creating the court of industrial relations in Kansas which was passed early this year. I will discuss that law because it is probably the most interesting bit of legislation in this field, certainly the most interesting in this country.

The Kansas law creates a Court of Industrial Relations consisting of three judges, whose term of office is three years. The jurisdiction of the court is over the manufacture of food or clothing, the mining of fuel, the transportation of those commodities and over public utilities. A bill was introduced in New York state in the recent session which was a verbatim copy of the Kansas law in every respect but one. There were added manufacturing concerns in which wood or iron was used for the construction of material to be used eventually in building or on public utilities.

These industries are declared by the Kansas law to be "affected with a public interest." In these industries there must be no strikes, and there must be no suspension without the permission of the industrial court. The penalties for violation of the law are, if by a "person" $1,000, or one year in jail, or both; if by an official of a union or corporation $5,000, or two years in jail, or both.

The court may intervene in the case of an industrial dispute, either on its own motion or when requested to do so by either one of the parties, or on the appeal of ten citizens, or on the complaint of the attorney-general of the state. It may issue a temporary award at the outset and then after its investigation a final award. The final award is to be retroactive, so that if wages are raised the employees will be entitled to back pay from the date that the investigation began. If the result is the reduction of wages the employees will have to pay back to the employer the amount that they have received over and above the amount awarded by the court. The court must proceed in accordance with the rules of evidence as laid down by the Supreme Court of the state.

There are certain protective features. Wages and profits are to be "reason-

able." The workers are not to be discharged on account of testimony given before the court, the employer is not to be boycotted for anything he has done in connection with the court, and the right of appeal to the Supreme Court of the state by either side is affirmed. There are some provisions regarding union relations which seem to imply, without directly requiring it, that a union should be incorporated.

Very interesting possibilities are suggested by this Kansas law. It requires industry to operate with "reasonable continuity and efficiency." That is a very startling requirement for coal mines, which are not in the habit of operating with continuity, to say nothing about their efficiency. Through this law Kansas becomes the first state to enact a minimum wage law for men. The court has the power to fix wages and everything else in connection with the labor contract. It will be interesting to see whether that provision is constitutional.

With the expressed purpose of the Kansas law—that of promoting stability and peace in essential industries—few would range themselves in opposition. Indeed it is because we are all so desirous of attaining those very ends that the Kansas experiment should be examined with unusual care. Will the law accomplish the things intended?

At the very outset is the rather striking fact that the law does not define the qualifications of the judges of the court. There is no attempt to insure either impartiality or competency. The judges may be employers or they may be labor leaders. They may be opera singers or horse doctors. The law suggests no standards of any sort to guide the executive in his selection of these important officials.

The law assumes to throw a certain protection around those who must subject themselves to the decrees of the court. Wages and profits must be "reasonable and fair." But what does that mean? There is no definition currently accepted of the word "reasonable," when applied to the employee's wage. Labor is justly suspicious when it is called upon to give up the exercise of economic pressure in the determination of that question and to trust instead to the opinion or prejudice of a court.

Equally illusory is the defense that the law affords against discrimination, in the requirement that a worker may not be discharged on account of any testimony given before the court. This provision has very little significance, for an employer can easily discharge a man whose conduct is distasteful to him and find plenty of perfectly legal reasons for doing it. But Kansas should know better than to try again what it tried once before and was told it could not do. Several years ago a Kansas statute, denying to an employer the right to discharge a man for union membership, was declared unconstitutional by the Supreme Court of the United States (*Coppage* v. *Kansas*). There is no reason to suppose that this provision in the new law would have any better standing before the court.

We may grant that if the law is effective some very desirable things will have been accomplished, but we may question whether this is the best way to get them done. To be effective there will be required a degree of supervision of industry by the state that could be exercised far better if the enterprise in question were state owned. The law requires these industries to be operated with "reasonable continuity and efficiency." If their owners and managers fail to operate in that manner the law requires the Court of Industrial Relations to take

them over and run them until they are on a sound and efficient basis. This provision seems to take it for granted that private enterprise may fail, and that public enterprise will not. It assumes that the court has greater industrial ability and business acumen than the private owners. If this is the case, much time would be saved and more valuable service rendered if the state were to take over these industries and operate them at once.

Far more important than this is the fact that the law utterly confuses industrial controversies with private personal controversies, and assumes that they can be handled in the same way. That is impossible because the two are essentially different. Private quarrels can be settled in a court. In such a case the questions to be settled relate to the legality of the acts of the individuals before the court. Have these acts been in accordance with certain legal regulations previously existing and understood? In deciding this question the judge is not left to his own resources. He is guided and controlled not only by the statute law applicable to the case but also by a vast body of common law and precedent, by well established and accepted principles of jurisprudence.

It is different with an industrial dispute. The question is not legal but social and economic. If such a question is to be settled by a judge, he is thrown altogether upon his own resources. He is guided by no body of law or agreed opinion. He will find no standards which men have everywhere accepted. He will have no recourse to the experience and wisdom of the past, as will his brother in the courts of law.

The Kansas Court of Industrial Relations may therefore coerce, but it cannot be said to be functioning as a court because it has none of the attributes of a court except the power to compel obedience. Instead of deciding a case according to law, it will decide according to the opinion, prejudice, knowledge or ignorance, good or ill will of the members of the court. This, it must be admitted, is a fundamental defect in an agency set up for the purpose of making an end of industrial strife.

THE CONSUMER DEMANDS GOVERNMENT COERCION

The Kansas law represents the high water mark, so far, of the movement in this country for compulsory arbitration. There is no reason, however, to suppose that it marks the peak of accomplishment in this field. Rather, it seems to indicate the first accomplishment of a movement that has great and possibly increasing support. The Cummins bill in Congress was stripped of its anti-strike features, but immediately on the calling of the "outlaw" railroad strike this spring a new bill was introduced in the Senate prohibiting strikes on railroads.

With a demand apparently so great, it is interesting to note its origin. It needs no argument to show that the demand does not come from the workers. Neither, apparently, does it come from the employers. Throughout its history the American Federation of Labor has been opposed to compulsory arbitration. They would have to change their attitude most strikingly if they were to favor government coercion in these matters, for in the past they have been opposed even to voluntary arbitration. If you take the great strikes of the last ten or fifteen years in the coal mines, in manufacturing—in everything but transportation—you will find the employers opposing voluntary arbitration. It was the threat of government operation in 1902 by the President of the United States that forced arbitration in

the anthracite coal fields, and in every other great coal strike since that time the employers have refused arbitration. The same has been true of the great strikes in manufacturing enterprises. I do not believe that the employers will come forward now and ask for compulsory arbitration by the government, when they have opposed voluntary arbitration in the past.

In transportation the situation is different. The employers there have desired arbitration and they have desired it because they are already under government control as to rates. They might well, therefore, be under government control as to wages. They could then shift the responsibility for raising wages to the same body which is responsible for keeping down their income.

The demand comes from consumers. Sometimes it seems to come from employers, but usually in their capacity as shippers—consumers of transportation. They are desirous of keeping the sources of raw material accessible. They want to ship their finished products, so they ask for compulsory arbitration for the railroads, not for themselves. The consumer is irresponsible in this matter. He wants industry to keep going and he does not care much what keeps it going. We cannot afford to trust the consumer too far in a matter in which he is asking for benefits without assuming responsibilities.

CAUSES FOR WORKERS' OPPOSITION OF COMPULSORY ARBITRATION

The workers oppose compulsory arbitration because of the fear of what it may do. They are afraid of compulsion. They are opposed to a minimum wage by law. The American Federation of Labor is on record as being opposed to the limitation of hours by law. They are afraid of the principle of compulsion, even if it is applied only to public utilities, lest it be extended to other industries. What industry, indeed, is not affected with a public interest? They also have a specific fear, based upon experience. Looking back into the history of the development of trade unions they recall a time when all organizations for the purpose of affecting the labor contract were conspiracies in violation of common law, and they are living in the very presence of court decisions of recent date that threaten the effectiveness, if not the very existence, of unions. In the light of these experiences it is not surprising that the unions should be very suspicious of any extension of government control over their activities. Still more to the point, as a determinant of labor's attitude, is the fact that compulsory arbitration is a denial of an essential right—that of collective economic action. So long as the workers are outsiders, holding their positions in industry by grace of the employer and without right, with no legal protection in their jobs, they give up their right to strike at their peril. They must be equipped to protect themselves, and they doubt whether a public arbitrating body can be trusted to give them justice.

The very discussion of this subject fills them with apprehension. Great stress is laid on the obligations that the employees owe the public, but there is little or no discussion of the obligations that the public owes the worker. Advocates of compulsory arbitration seem to be concerned with making men work, and to care very little about securing justice. They are not asking whether there are significant and removable causes in the background of industrial unrest, but they appear to be looking for a way of keeping men at their jobs. The workers feel that if they are to be kept at their jobs by law, the public will go away perfectly satisfied, and

not concern itself with the troublesome question of justice.

When we pass a compulsory arbitration law, denying the right to quit in concert and leaving the right to quit individually, as, of course, we must, under the thirteenth amendment of the Constitution, we are not leaving an essential right in the hands of employees. The right to quit individually is, of course, a valuable right, but that alone does not give the workers the economic power which is necessary if they are to bargain effectively with their employers, who are organized and free to use their organized strength.

DISADVANTAGES OF COMPULSORY ARBITRATION

Compulsory arbitration takes away the only means by which there may be developed responsibility on the part of the workers. If you are going to give over to a government body the function of finding out what is desirable in industry and the putting of it into effect, instead of letting the workers help legislate for themselves as they are doing so effectively in the clothing industry, you are taking away whatever opportunity there may be for developing that very responsibility, that very sober sense of being a part of industry and answerable for its success and development that is essential to the development of a free people.

Compulsory arbitration takes away one right and it gives no essential right in return. A right which belongs to everyone and which has existed for years—the right to quit in concert with others as well as individually—it is now proposed to take away without a *quid pro quo*. A court is not a sufficient offering. It is a right that has been taken away. Nothing but a right can justly be offered in exchange. A court is an experiment; to the men it is a gamble. The establishment of it constitutes no assurance to the workers that their rights will be safeguarded. Meanwhile the one thing they can count on—the right to act for themselves—is taken away.

The labor movement is a great surging forward of a vast body of men and women. They make mistakes, they sometimes choose methods that are unwise and wrong, but they are part of a movement ages old, the movement forward and upward of the masses of the people. If this movement is to continue—this movement of the people to a better status, to a better standard of living, to different and better relationships—the vanguard of it must at one point or another run counter to or go beyond conventional standards of justice and expediency. Any court set up to determine how far they shall go, will represent these conventional standards. It will not permit the vanguard to move forward, it will not permit the pioneer to express himself nor to raise up new standards of justice. The court, however just it may be according to the standards of the time, will not be a pioneer.

The movement for compulsory arbitration is headed in the wrong direction. Industrial peace will not be achieved through that agency. This, however, is not to say that the state can do nothing toward promoting better industrial relations or that it may not do much to make strife less necessary and less likely to occur. On the contrary the state can do much. It is for that reason that every effort should be made to direct the activities of the state away from negative and paralyzing coercion and toward a positive, constructive policy that will make for greater freedom rather than less, and for peace based on satisfaction rather than on fear of courts and jails.

For industry in general it is compe-

tent and reasonable for the state to establish a minimum below which bargaining and struggle shall not be carried on. Thus, at a single blow, the meanest forms of controversy are made unnecessary and the area of struggle is narrowed. Beginnings of such a policy have already been made in wage and hour legislation, in laws affecting safety and sanitation, in workmen's compensation laws, etc. What is needed is to extend and strengthen these laws?

Above the level so established, workers and employers alike should be free to organize, to bargain and to exercise pressure by means of the lockout and the strike. It is in the industries where such organization and such freedom have reached the highest development that we have the greatest industrial peace.

GUARANTEES INSTEAD OF COERCION THE WAY TO PEACE

Public Utilities.—In public utilities, the continuous operation of which is essential to public welfare, the state should go further. We cannot afford to have strikes in these industries. It follows logically, therefore, that the remedy is not to prohibit strikes but to make them unnecessary. Where the workers in other industries are enabled to make progress by the use of their economic power, including the strike, workers in public utilities should receive guarantees that will make the strike for them an unnecessary weapon. Employment in these industries should have a preferred status. For them the state might reasonably establish, not minima, but absolute standards of employment that will insure to the workers all that they could ever hope to accomplish through the strike.

They should be guaranteed reasonable hours of labor, not exceeding eight hours a day; wages should be higher than are paid in similar occupations that are not "affected with a public interest;" after six months a worker should be entitled to his job, subject only to discharge for cause, with a board of review to pass on the case on which the workers have equal representation with the employers. If a worker is laid off through no fault of his own he should receive unemployment benefits in the form of a high percentage of his weekly wage while he is looking for a new job.

State Employees.—The same policies should be adopted by the state toward its own employees. To ask policemen and firemen to remain at work because of the character of their duties and their obligations to the public, without assuring them and their families work conditions and wages that will mean health, comfort and happiness, is an act of bad faith. It constitutes a betrayal of trust that deprives any community guilty of it of the right to protest if its employees strike to compel attention to their just necessities. Such a community does not come into court with clean hands.

We are confronted by the opportunity of making a choice between constructive and destructive policies, between peace with good will and the deadly peace of coercion that ends with destruction and riot. The supreme determinant in that choice is the spirit with which society at large approaches the question. Before any remedial proposal can become effective, we must have, I believe, a spiritual awakening, a new attitude toward industry on the part of both employers and employees. We need to understand that there is an essential similarity of heart and conscience among all groups, that employers and employees are the same kind of people, working toward the same ends. We must recognize the ethics

of fair distribution and the inethical nature of income without service. The profiteer of every sort should be driven from the society of decent men. Service must replace profit as a motive for industry, and desire for power must make way for good will. Given that spirit, which may be developed at any time, anywhere, on either side of the industrial controversy or among the public itself, we shall have found a way better than the way of courts, better than coercion, the best possible way toward industrial peace.